IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 8152 of 2005

Between:

N.V.Narasaiah, s/o N.Venkatappaiah,
r/o Sher Mohammed Pet, Jaggaiahpeta Mandal, Krishna District.

..... PETITIONER

AND

1 The Depot Manager, APSRTC, Jaggaiahpeta Depot, Jaggaiahpeta,

Krishna District.
2 The Regional Manager, APSRTC, Krishna Region, Vijayawada,

Krishna District.
3 APSRTC Musheerabad, Hyderabad rep., by Vice Chairman &

Managing Director

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue notice, call for records, to quash and set-aside the proceedings No.E1/255(4)/2003-JPT, dated 8/4/2005 of the 1st respondent thro' which the petitioner deemed to have been retired from the service of the Corporation w.e.f. 31/7/2003 on the basis of the proceedings under Letter even dated 2/4/2005 of the 1st respondent being contrary to the Principals of Natural Justice, the Regulation No.19(3)(a) (i) of APSRTC Employees Service Regulations and in violation of the judgment dated 1/3/2005, made in WP No.1976/2005, apart from being violative of Articles 14, 16, 19(1)(g) and 21 of Constitution of India while granting such other relief or the reliefs as the petitioner is found entitled to in law, by issuance of a writ more particularly a writ in the nature of a writ of certiorari or any other appropriate writ or direction.

Counsel for the Petitioner:MR.CH.RAMESH BABU

Counsel for the Respondents : MR.R.MANMADHA REDDY

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The Court made the following :

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ORDER:

This Writ Petition is filed for issuance of writ of Certiorari to call for the records and quash the orders of the first respondent vide proceedings No.E1/2555(4)/2003-JPT, dated 8.4.2005 through which, the petitioner deemed to have been retired from the service with effect from 31.7.2003 on the basis of the proceedings of the third respondent, dated 2.4.2005.

The case of the petitioner is that he was appointed as driver grade-II by the respondent-Corporation on 9.2.1979 and his date of birth, on the basis of his driving licence and after examination by the medical board, was recorded in the service register as 3.1.1949. While so, the first respondent required the petitioner to furnish the transfer certificate from the school, where he studied upto VIII class and accordingly, the petitioner obtained the transfer certificate from the school and submitted the same to the respondent-Corporation, in which, his date of birth was entered as 15.7.1945. Thereupon, the third respondent issued a show-cause notice, dated 30.6.2003 calling upon the petitioner to explain as to why the date of birth entered in the school records as 3.1.1945 should not be taken as correct. Without submitting any explanation, questioning the said show-cause notice, the petitioner filed a writ petition being W.P.No.13508 of 2003, which was dismissed by this Court giving liberty to the petitioner to submit his explanation within four weeks and the respondents were directed to decide such an explanation in accordance with law.

Even after the dismissal of the writ petition, since the petitioner failed to submit any explanation, the first respondent, through orders, dated 28.1.2005 altered the date of birth of the petitioner in the service register from 3.1.1949 to 15.7.1945 basing on the school records. Questioning the same, the petitioner filed W.P.No.1976 of 2005 on the ground of lack of authority and jurisdiction on the part of first respondent to alter the date of birth in the service register as the power is vested on the third respondent under Regulation 19(3)(i) of APSRTC Employees (Service) Regulations. This Court after considering Regulation 19(3) of the APSRTC Employees' (Service) Regulations, 1964, by order, dated 01.03.2005 allowed the writ petition setting aside the proceedings, dated 28.1.2005 and consequential proceedings of superannuation, dated 31.1.2005, passed by the first respondent with an observation that the order would not preclude the third respondent to take appropriate decision in accordance with law and as per regulations. In pursuance of the orders of this Court, dated 1.3.2005, though the first respondent allowed the petitioner to work, however, the impugned proceedings were passed stating that the petitioner is deemed to have been retired from the services of the Corporation with effect from 31.7.2003. Questioning the same, the writ petition is filed.

Respondent-Corporation filed a counter affidavit denying the allegations made by the petitioner. It is stated that at the time of appointment, the petitioner had not produced his educational certificate and hence his age was assessed as 30 years as per the medical certificate No.130, dated 3.1.1979 and thus his date of birth was fixed as 3.1.1949. Later, the petitioner submitted his educational certificate No.107871 in which, his date of birth was mentioned as 15.7.1945. Since the petitioner claims his date of birth as 15.7.1945, a show-cause notice was issued calling upon the petitioner as to why his date of birth should not be changed as 15.7.1945 instead of 3.1.1949. As the petitioner failed to submit any explanation, proceedings were issued on 28.1.2005 changing the date of birth of the petitioner in the service register as 15.7.1945. It is stated that in pursuance of the orders of this Court in W.P.No.1976 of 2005 the petitioner was taken for duty on 31.3.2005 and on 2.4.2004 the Vice-Chairman & Managing Director-third respondent has issued the proceedings fixing the date of the petitioner as 15.7.1945 and consequently treated the petitioner to have been retired from service with effect from 31.7.2003 duly treating the service beyond 31.7.2003 as just service, which shall not count for increments, leave, gratuity etc. Basing on the same, the first respondent passed the

impugned proceedings.

Learned counsel for the petitioner vehemently contended that without conducting any enquiry, the date of birth of the petitioner has been altered in the service register, that though the petitioner has submitted a representation to the Depot Manager, the Vice-Chairman and Managing Director has not conducted any enquiry as per Regulation 19(3) (1) of the Regulations to determine the age of the petitioner and that the order, dated 2.4.2005 passed by the third respondent has not been communicated to the petitioner and thus the petitioner is deprived of the opportunity to lead the evidence to prove his date of birth and therefore, the impugned order suffers from serious incurable infirmities.

On the other hand, the learned Standing Counsel appearing for the respondent-Corporation contended that since the date of birth of the petitioner was mentioned as 15.7.1945 in the school certificate submitted by the petitioner, show-cause notice, dated 30.6.2003 was issued, for which, no explanation was offered by the petitioner. When the Depot Manager passed the orders, dated 28.1.2005 retiring the petitioner from service taking into consideration the date of birth mentioned in the transfer certificate furnished by the petitioner, the same was challenged by the petitioner before this Court and this Court set aside the same holding that the Depot Manager is not the competent authority to alter the date of birth of an employee and directed the third respondent to pass appropriate orders. In view of the same, the third respondent passed the appropriate orders and therefore, the order under challenge does not suffer from any incurable infirmities so as to call for interference of this Court.

It is not in dispute that in the service register, the date of the petitioner is mentioned as 3.1.1949 as per the medical certificate said to have been produced by the petitioner. Thereafter, on the demand of the first respondent, the petitioner obtained transfer certificate from the school, in which he had studied upto VIII class and submitted the same to the respondent-Corporation, in which, his date of birth was mentioned as 15.7.1945. Basing on the said certificate, the third respondent issued a show-cause notice, dated 30.6.2003 calling explanation of the petitioner and the same was challenged in W.P.No.13508 of 2003. The said writ petition was dismissed with liberty to the petitioner to submit his explanation within a period of four weeks and the respondents were directed to dispose of the matter in accordance with law. It seems that since the petitioner did not submit any

explanation, the first respondent passed the orders, dated 28.1.2005 altering the date of birth of the petitioner in the service register from 3.1.1949 to 15.7.1945. Challenging the same, the petitioner filed W.P.No.1976 of 2005 and this Court after taking note of the fact that the Depot Manager is not the competent authority as per the Regulation 19(3) of the APSRTC Employees' (Service) Regulations, 1964, allowed the writ petition on 1.3.2005, but liberty was given to the third respondent to take appropriate decision in accordance with law. Thereafter the impugned proceedings have been passed by the Depot Manager basing on the age determination of the petitioner by the Vice- Chairman and Managing Director, vide his proceedings, dated 2.4.2005.

The contention of the learned counsel for the petitioner is that the proceedings of the Vice-Chairman and Managing Director, dated 2.4.2005 have not been furnished to him. Whereas learned standing counsel for the respondents contended that the proceedings, dated 2.4.2005 have been communicated to the petitioner. A copy of the proceedings, dated 2.4.2005 is made available. The Vice-Chairman and Managing Director after considering the case of the petitioner and after duly taking note of the transfer certificate submitted by him, which was issued by the Head Master of Zilla Parishad High School, Jaggaiahpet showing the date of birth of the petitioner as 15.7.1945, as per the Regulations, 1964, issued the proceedings altering the date of birth of the petitioner as 15.7.1945 from 3.1.1949 and treating the petitioner to have been retired from service with effect from 31.7.2003.

There cannot be any dispute that under Regulation 19 (3) of the APSRTC Employees' (Service) Regulations, 1964 the Vice-Chairman and Managing Director is the competent authority to determine the date of birth of an employee, which reads as follows:

> "The date of birth as determined by the appropriate provisions of the preceding clauses shall be recorded in the service register. The date so recorded shall be held to be binding and no alteration of such date shall be permitted subsequently. It shall however, be open to the Corporation in the case of a Class-I employee, and to the Managing Director in the case of any other employee under his administrative control, to cause the date of birth to

be altered-

i. Where in his opinion it had been falsely stated by the employee to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the employee being retained in service longer than if the alteration had not been made; or

ii. Where in the case of illiterate staff, the Managing Director is satisfied that a clerical error has occurred."

The contention of the learned counsel for the petitioner is that the alteration of the date of birth once finalized under the service Regulations, it cannot be altered at the instance of the employer, but it can be altered at the request of the employee. On the directions of the first respondent, the petitioner obtained the transfer certificate from the school authorities and produced the same. Therefore, date of birth of the petitioner has been altered in the service register basing on the transfer certificate by the Vice- Chairman and Managing Director, though not at the specific request of the petitioner, but on furnishing a copy of the transfer certificate by the petitioner. Regulation 19 (3) makes it clear that the Managing Director is competent authority to cause the date of birth to be altered, where in his opinion, it had been falsely stated by the employee to obtain an advantage. Therefore, the alteration of the date of birth of the petitioner by the Vice-Chairman and Managing Director cannot be said to be without any basis. Though the petitioner himself produced the transfer certificate, he was afforded reasonable opportunity to submit an explanation, but the petitioner has not chosen to submit any explanation in pursuance of the show-cause notice, dated 30.6.2003.

The further contention of the petitioner is that the petitioner has submitted a representation to the respondents and though the same has been received by the Depot Manager, no orders have been passed and without affording any opportunity the Vice-Chairman and Managing Director has passed the proceedings, dated 2.4.2005. No doubt, as seen from the proceedings of the Vice-Chairman and Managing Director, dated 2.4.2005, no opportunity was given to the petitioner to produce any evidence, but at the same time, he has taken into consideration the transfer certificate issued by the Head Master, Zilla Parishad High School

Jaggaiahpeta and accordingly determined the age of the petitioner. So, when the petitioner himself produced the transfer certificate showing his date of birth as 15.7.1945, the question of any further opportunity to conduct any enquiry to determine his age does not arise. If it is the case that the Vice-Chairman and Managing Director has taken any unilateral decision basing on the material collected by him through his subordinates, then certainly it can be said that the petitioner ought to have been given an opportunity, but here is the case where the petitioner himself has furnished the transfer certificate. Since the order has been passed basing on the transfer certificate produced by the petitioner, there is no need to pass any separate orders on the representation of the petitioner. Even the said representation of the petitioner, dated 4.2.2005 has not been addressed to the Vice-Chairman and Managing Director, but it is only addressed to the Depot Manager. Hence, there are no grounds to interfere with the impugned proceedings since it is completely in accordance with the Regulation 19 (3) of the APSRTC Employees (Service) Regulations, 1964.

The writ petition is devoid of merits and the same is accordingly dismissed. No costs.

K.C.BHANU, J

19th JULY, 2005.

Tsr.

To

1 The Depot Manager, APSRTC, Jaggaiahpeta Depot, Jaggaiahpeta,
Krishna District.
2 The Regional Manager, APSRTC, Krishna Region, Vijayawada,
Krishna District.
3 The Vice Chairman & Managing Director, APSRTC,
Musheerabad, Hyderabad.

4. Two C.D. copies.